



Meeting Minutes – Mtg #2

To: HJR #28 Study Participants
From: Russ Katherman
CC:
Date: February 2, 2004
Re: Studying “Best Value” Construction Contracting for Public Works
Minutes from Meeting #2 held on January 27, 2004

Location: State Capitol Building, Room 172 from 9 a.m. to 3 p.m.

Study Participants Present: Jay Skoog, Chuck Hanson, Jim Whaley, Tom O’Connell, Neil Westesen, Jeanne Wolf, Dal Smilie, Michael Everts, Bob Lashaway, Cary Hegreberg, Carl Schweitzer, Angela Feser, Cliff Chisholmm, Dick Shanahan, Gary Griffith, Russ Katherman

The following list identifies Directives from the Study Participants to date (Directive # and date given).

Directives

D*- None

Actions

The following list identifies Action Items from the Study Participants to date (Directive # and date given).

Action Items	Who	Due Date	Date Accomplished
A1 – 07.23.03 Develop core issues for data gathering and research for decision making.	A&E	08/15/03	Done 10/17/03
A2 – 07.23.03 Research potential of presenting HJR #28 at associations and organization meetings to keep people informed.	A&E	on-going	on-going
A3 – 07.23.03 Identify core group for interim draft discussion.	All	Prior to 2 nd meeting	Decided to be unnecessary
A4 – 07.23.03 Analyze schedule for revisions and need to reduce time prior to 2 nd meeting.	A&E	08/15/03	Not possible
NEW ACTION ITEMS:			
A5 – 01/27/04 E-mail copies of MDT D-B Guidelines and the Oregon D-B paper.	A&E	Before 3 rd meeting (if any)	02/02/04 – posted on web site
A6 – 01/27/04 Continue research and draft preparation	A&E	Before 3 rd meeting (if	

A7 – 01/27/04	Draft potential legislation	A&E	any) Before 3 rd meeting (if any)
A8 – 01/27/04	Submit request for legislation	A&E	04/16/04
A9 – 01/27/04	Update web page with meeting minutes, core issues, action items, and items used as reference material.	A&E	02/13/04

Meeting Minutes

1. Katherman reviewed the agenda, HJR #28, core issues and action items arrived at from the last meeting noting the progress made on each.
2. Considerable time, effort and discussion centered on re-working the draft version of “Best Value” previously e-mailed to entire group. Definition was distilled into a couple of sentences: “The most advantageous balance of price, quality, and performance achieved through competitive procurement methods in accordance with stated selection criteria.” Conversation involved the need to further define the essential elements of a procurement process and selection criteria but that these shouldn’t go into the definition. The procurement process and selection criteria would need to be placed into the report and recommendations (and any legislation) to the legislature.
3. Much discussion was had regarding the four (4) areas of HJR #28 on which the Department is to report. A general lack of consensus seems to exist among the professional and construction community concerning the applicability of an alternative delivery system. The perspectives vary widely among members of the design profession and construction arena regarding the use of a system by public entities other than low bid.
4. Concern was raised by MCA regarding how “liberally” the courts’ have ruled with regard to the discretion public entities (local governments and school districts, not the state) utilize in determining a responsible bidder when making awards of construction contracts. The thought being that criteria for making such a determination be spelled-out in advance in the bidding documents.
5. MCA thought it essential that the state’s procurement process default to low bid absent compelling reason to go with an alternative form of contractor selection and project delivery. The state does not have large concerns with design-bid-build process it currently utilizes (i.e. low bid) but acknowledges that it is not the most efficient or cost-effective in many situations and would accept alternative processes:
 - Flexibility in contractor selection in certain situations may be helpful.
 - Low bid lacks a high level of collaboration between the design and construction aspects of project delivery.
 - Low bid relies on “enforcement” to achieve specified quality (and the specified quality may be impractical to achieve in the local market place) rather than collaboration and partnership.
 - Low bid sets up an inherently contentious process among owner, contractor and designer.
 - Low bid may encourage some bidders to cut corners on products, quality, and other requirements to win the project.
 - Low bid doesn’t seem to attract the more highly skilled craftsmen and knowledgeable contractors except on a limited basis.
 - However, the design-low-bid-build method is brutally elementary with regard to objective analysis/comparison of bid responsiveness (addenda, signatures, bid bond, etc.) and bid cost - which satisfies skepticism (in most instances) relating to any possible “manipulation” of the procurement process with substantial comparisons.
6. Discussion identified areas from which to gather decision-making processes currently used by others in their efforts to go other than low bid and how they establish selection criteria:
 - MDT Design-Build legislation and guidelines;
 - Oregon Design-Build Whitepaper; and,
 - Georgia Pre-Design Manual and Project Delivery Options manual (preferred by A&E for the re-design effort and detailed decision-making process for choosing an alternative delivery method).
7. Criteria for people participating in selection panels should involve the following:

- Persons knowledgeable of: design and construction, O&M, type of project to be constructed, facility users, senior management, member of A&E Division, an A/E and a Contractor rep.
 - 5-7 people minimum pending size of project.
 - One panel throughout RFQ, RFP and award process. No switching of members of panel.
 - Selection panels must have no conflict of interest most likely defined as having other business arrangements, a current contract with contractor, pecuniary interest, or relationship of a personal nature (i.e. somehow related).
8. A schedule for completion of the study was discussed:
- For A&E to have any potential legislation as part of an executive request, the issue must be submitted to the Budget Office no later than April 16, 2004 (does not need draft of legislation).
 - Any draft legislation is to be submitted from the executive branch, the final draft is due no later than September 15, 2004.
 - A&E hopes to post the draft report for comment no later than the end of June 2004.
 - It was thought another meeting could be conducted in July 2004 if necessary.
9. Group adjourned at 3:00 p.m.

A&E Division's Current Perspective on the Study

1. The following are areas noticed by the Division:
 - There are varying degrees of receptivity in all areas of the construction industry (including design) to something other than low bid (i.e. design-bid-build, DBB).
 - The concept of allowing a contractor "selection" process based upon qualification requirements causes some to have concerns of favoritism.
 - Some in the design profession may be disturbed by the public entity not working with an architect or engineer first (or throughout the delivery process) or being able to select their architect independent of contractor involvement.
2. Other issues from within the construction community may present themselves in this process rather than this report simply addressing a public entity's (i.e. the state) use of a process for project delivery other than the one it currently utilizes.
3. It is the intent of the Division to provide a report in compliance with the resolution outlining the pros and cons of current business practices and of various options. Potential legislation would be left to others.

END OF MINUTES